

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
December 14, 2006 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Ruth Ann Wall, presiding officer, presided No Board members were present.

Joseph Haughwout appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case
Lic = Licensing Application
RF = Recovery Fund Claim
Trades = Tradesmen Disciplinary Case/Application

C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

Participants

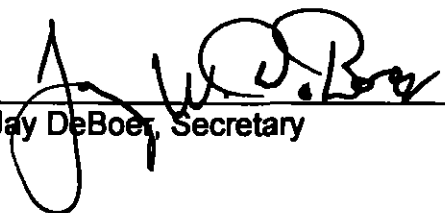
- | | |
|--|---------------------------------------|
| 1. Woodcraft Visions Inc
File Number 2006-03521 (Disc)
(NO DECISION MADE) | Todd Heyns – R
Ray Jackson – W |
| 2. Carpenter Remodeling and Construction Incorporated
File Number 2005-00695 (Disc)
(NO DECISION MADE) | Trent Carpenter – R |
| 3 The M C Johnson Group
File Number 2006-01924 (Disc)
(NO DECISION MADE) | Althea Roache-McDonald – C |
| 4. The M C Johnson Group
File Number 2006-04784 (Disc)
(NO DECISION MADE) | George Liakos – C
Gayle Liakos – C |
| 5. Kenneth H Middleton Jr.
t/a M & M Home Improvement
File Number 2006-02452 (Disc) | Middleton – R
Westlund – C |

The meeting adjourned at 1:40 p.m.

BOARD FOR CONTRACTORS



Mark D. Kinser, Chairman



Jay DeBoer, Secretary

COPY TESTE

Custodian of Records

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Kenneth H Middleton Jr, t/a M & M Home Improvement
Fairfax, VA 22030

File Number 2006-02452
License Number 2705081144

CONSENT ORDER

Respondent Kenneth H Middleton Jr, t/a M & M Home Improvement ("Kenneth H Middleton Jr") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's Regulations provides:

18 VAC 50-22-200. Remedial education, revocation or suspension; fines.

The board may require remedial education, revoke or suspend a license or fine a licensee when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq) of Title 54.1 of the Code of Virginia, or any regulation of the board.

Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended:

On August 9, 2006, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Kenneth H. Middleton, Jr. ("Middleton"), t/a M & M Home Improvement, to the address of record. The certified mail was returned by the United States Postal Service ("USPS"), marked "Not Deliverable as Addressed, Unable to Forward, Return to Sender." The Notice was also mailed, via certified mail, to Middleton at 21084 Potomac View Road, Sterling, Virginia 20165. The certified mail was returned by the USPS, marked "Unclaimed." The Notice was also mailed, via certified mail, to Middleton at 10817 Monticello Drive, Great Falls, Virginia 22066. The certified mail was returned by the USPS, marked "Unclaimed." The Notice was also mailed, via certified mail, to Middleton at 20447 Chesapeake Square, #201, Sterling, Virginia 20165-4352. The certified mail was returned by the USPS, marked "Not Deliverable as Addressed, Unable to Forward, Return to Sender."

The Notices included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter.

On September 19, 2006, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Patricia Westlund, Complainant; Jennifer Kazzie, Staff Member; and Anthony Orange, Presiding Board Member. Neither Middleton, Respondent, nor anyone on his behalf appeared at the IFF.

On November 15, 2006, a letter reconvening the IFF was mailed, via certified mail, to Middleton at the address of record. The certified mail was returned by the USPS marked, "Not Deliverable as Addressed, Unable to Forward." The letter was also mailed, via certified mail, to Middleton at 21084 Potomac View Road, Sterling, Virginia 20165. The certified mail was signed for and received.

On December 14, 2006, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Kenneth Middleton Jr. ("Middleton"), Respondent; Patricia Westlund ("Westlund"), Complainant; Joseph Haughwout, Staff Member, and Ruth Ann Wall, Presiding Officer.

The Amended Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

Middleton testified that he changed from a sole proprietorship to a LLC at the advice of his accountant. Since then, M & M Home Improvement has closed and no longer operates as a business. Currently, Middleton is a limited partner in a partnership that does consulting work only. In addition, Middleton acknowledged he received requests from Westlund, but did not refund any money for work not performed. Middleton expressed frustration that he did not do things differently. He wished he had just paid her back the money. Instead, he decided to let the court decide. Westlund did obtain a judgment, and Middleton has satisfied that judgment by paying Westlund \$15,000.00. Middleton agrees that he eventually refunded the money to Westlund because of the judgment, and would not have refunded the money except for the judgment being awarded.

The Board and Kenneth H Middleton Jr, as evidenced by the signatures affixed below, enter into this Consent Order. Kenneth H Middleton Jr knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

By signing this Consent Order, Kenneth H Middleton Jr acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts

as outlined in the Amended Report of Findings. Kenneth H Middleton Jr consents to the following term(s):

Count 1	18 VAC 50-22-230 A	\$500.00
Count 2	18 VAC 50-22-260.B.18	\$500.00
Count 3	18 VAC 50-22-260.B.19	\$500.00
Count 4	18 VAC 50-22-260.B.9	\$200 00
Count 5	18 VAC 50-22-260.B.27	\$1,000.00
Count 6	18 VAC 50-22-260.B.16	\$500.00

TOTAL MONETARY PENALTIES		\$3,200.00

Further, for violation of Counts 1 through 6, Kenneth H Middleton Jr agrees to successfully complete a Board-approved remedial education class

Kenneth H Middleton Jr also agrees to pay \$500.00 in Board costs.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within ninety days of the effective date of this consent order unless otherwise specifically noted above. Kenneth H Middleton Jr acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Kenneth H Middleton Jr will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Kenneth H Middleton Jr acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Kenneth H Middleton Jr's license until such time as there is compliance with all terms of this Order. Kenneth H Middleton Jr understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

Kenneth H Middleton Jr
t/a M & M Home Improvement

Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____,
2006.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2006.

Board for Contractors

BY: _____
Jay W. DeBoer, Secretary

EOO

**VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917**

**AMENDED
REPORT OF FINDINGS**

BOARD: Contractors
DATE: July 20, 2006 (amended December 14, 2006)

FILE NUMBER: 2006-02452
RESPONDENT: Kenneth H Middleton Jr, t/a M & M Home Improvement
LICENSE NUMBER: 2705081144
EXPIRATION: December 31, 2005

SUBMITTED BY: David Dornier
APPROVED BY:

COMMENTS:

None.

Kenneth H Middleton Jr ("Middleton"), t/a M & M Home Improvement, was at all times material to this matter a licensed Class C contractor in Virginia (No 2705081144).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s)

BACKGROUND:

On November 18, 2005, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Patricia Westlund ("Westlund") regarding Middleton. (Exh. C-1)

On June 25, 2005, M & M Home Improvements LLC entered into a written contract, in the amount of \$35,000.00, with Westlund to remodel a basement and screened-in porch at 1245 Barksdale Drive NE, Leesburg, Virginia 20176. The contract was signed by Kenneth H. Middleton Jr., as President and CEO of M & M Home Improvements LLC. The contract indicated, "Virginia H I C. # 2705081144." (Exh C-2)

1 Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

FACTS:

The contract indicated the name M & M Home Improvement LLC. (Exh. C-2)

On December 9, 2003, Class C contractor's license number 2705081144 was issued to Kenneth M Middleton Jr, t/a M & M Home Improvement, as a sole proprietorship. On June 21, 2006, the business name was changed to Kenneth H Middleton Jr. There are no other changes to the business name or trade name. (Exh. I-1)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

- B. The following are prohibited acts:

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

FACTS:

On November 5, 2004, M & M Home Improvement LLC registered as a limited liability company with the Virginia State Corporation Commission ("SCC"). Kenneth H Middleton Jr is the Registered Agent for M & M Home Improvement LLC. (Exh. I-4)

Pursuant to Section 54.1-1103 of the Code of Virginia, "No person shall engage in, or offer to engage in, contracting work in the Commonwealth unless he has been licensed under the provisions of this chapter "

On June 21, 2006, a search of the licensing records of the Board for Contractors revealed M & M Home Improvement LLC is not a licensed contractor in Virginia. (Exh. I-6)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

19. Allowing a firm's license to be used by another.

FACTS:

In addition to the facts outlined in Count 2:

The contract had the name M & M Home Improvements LLC, but indicated the license number for Middleton. (Exh. C-2)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges, prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements.

- a. When work is to begin and the estimated completion date;
- f. Disclosure of the cancellation rights of the parties;
- h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services,

FACTS:

The contract used by Middleton in the transaction failed to contain subsections a. and f. The contract also did not contain the contractor's license expiration date, class of license, and classifications or specialty services, as required by subsection h. (Exh. C-2)

5 Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260 Filing of charges; prohibited acts

B. The following are prohibited acts.

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

The contract indicated a price of \$35,000 00. (Exh C-2)

On December 9, 2003, Middleton was issued Class C contractor's license number 2705081144. (Exh. I-1)

Section 54 1-1100 of the Code of Virginia states, "'Class C contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,500 . . ."

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part

FACTS:

On June 22, 2005, Westlund paid Middleton \$5,000.00 by check. On August 18, 2005, Westlund paid Middleton \$5,000.00 by check. On September 2, 2005, Westlund paid Middleton \$5,000.00 by check. (Exh. C-3)

On November 4, 2005, Westlund wrote Middleton a note requesting a \$9,500.00 refund by November 15, 2005, for work that had not been performed. (Exh. C-4) Westlund taped the note to the front door of the subject property. (Exh. C-1)

On November 5, 2005, Westlund posted the note to the door at Middleton's house. (Exh. C-1)

On November 6, 2005, Westlund sent Middleton an email restating the contents of the note. (Exh. C-1 and C-4)

As of November 15, 2005, Middleton failed to provide the \$9,500.00 refund as requested. (Exh. C-1)

As of November 16, 2005, Middleton performed some framing, plumbing, and HVAC work at the subject property. (Exh. C-1)

On January 9, 2006, in the Loudoun County General District Court, Westlund filed a Warrant in Debt against M & M Home Improvements LLC and Kenneth H Middleton Jr. (Exh. I-5)

**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT**

**TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government**

1. Name: Ruth Ann Wall
2. Title: Presiding Officer
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on December 14, 2006
5. Nature of Personal Interest Affected by Transaction: _____

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

☒ I am able to participate in this transaction fairly, objectively, and in the public interest.

Ruth Ann Wall
Signature

12-14-06
Date